



Loeb & Loeb Is Making Connections ...

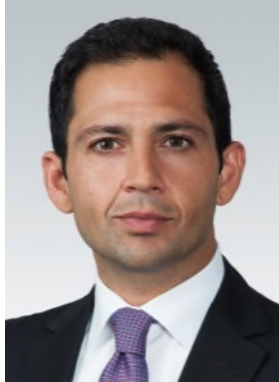
Monetizing the Athlete Brand

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Today's Speakers



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Today's Topics

- New platforms, opportunities and legal relationships for athletes and companies
- Athlete equity-based endorsement deals and related exit strategies
- Athlete as media mogul and (digital) media outlet
- Venture capital and private equity transactions
- Legal issues in deal making – for the athlete and the brand
- Legal impact on teams and leagues of the development of the athlete brand across multiple channels

New Platforms, Opportunities and Legal Relationships for Athletes and Companies

- What does the athlete as a brand mean?
- How can brands, teams, leagues and athletes monetize the athlete brand?
- Monetizing the athlete brand through multi-channel relationships
- Traditional endorsement deals allow athletes to provide endorsement for cash consideration
 - LeBron James – lifetime Nike deal
 - Derrick Rose – lifetime Adidas deal

Chicago Tribune

Rose signs 'lifetime' contract with Adidas

Deal reportedly worth \$260 million

February 25, 2012 | By K.C. Johnson, Chicago Tribune reporter

ORLANDO, Fla. — Two months after signing a five-year, \$95 million contract extension with the Bulls, **Derrick Rose** has really struck it rich.

Rose said he signed a "lifetime" contract with Adidas, which a source confirmed is for 14 years and \$260 million. CSNChicago.com first reported that figure.

"Man, it's definitely a blessing," Rose said. "They've been with me since the beginning and stuck with me and I'm happy I'm a part of them

ESPN

LeBron James signs lifetime Nike deal

 Darren Rovell
ESPN Senior Writer

Dec 8, 2015

Nike has signed [Cleveland Cavaliers](#) forward **LeBron James** to a lifetime deal in what one source familiar with the negotiations said is the largest single-athlete guarantee in company history.

"We can confirm that we have agreed to a lifetime relationship with LeBron that provides significant value to our business, brand and shareholders," Nike said in a statement. "We have already built a strong LeBron business over the past 12 years, and we see the potential for this to continue to grow throughout his playing career and beyond."

A company spokesperson would not say how much Nike paid. It is believed to be the first lifetime deal in the shoe and apparel company's 44-year history.

"I'm very humble, man," James told reporters after Monday's practice. "I'm just grateful to have the time for myself and my family, and I'm just grateful to be here."

Source: ESPN.com and Chicagotribune.com

The Evolving Landscape of Endorsement Deals

- Developing endorsement deals beyond the traditional.
- Now endorsement deals allow athletes to provide endorsement for cash consideration in addition to equity or similar incentive compensation structures
 - Stephen Curry – cash plus equity deal with Under Armour
 - Tom Brady – cash plus equity deal with Under Armour
 - Jordan Spieth – cash plus equity deal with Under Armour
- Using the “brand” to mobilize and diversify investments across industries.



Source: Under Armour

Athlete Endorsers Moving into Private Equity and Venture Capital for Deal “Access”

- Magic Johnson - owns a major share of the Los Angeles Dodgers and numerous Burger King, Starbucks, T.G.I. Friday's and 24 Hour Fitness franchises
- Roger Staubach – sold his company to Jones Lang LaSalle for a reported \$613 million
- Joe Montana – General Partner in Liquid 2 Ventures, a venture fund investing in early stage companies
- Steve Young – Co-Founder and Managing Director in the leading middle-market private equity firm HGGC



HGGC



The Athlete as Media Mogul and (Digital) Media Outlet

- Use of the athlete brand and social media presence to generate revenue
- Athletes are branching out and reinventing themselves in the media
 - Derek Jeter – The Players’ Tribune
 - Steve Nash – Consigliere Brand Capital
 - Carmelo Anthony – Melo7 Tech Partners
 - David Ortiz – Dugout Ventures
 - Kobe Bryant – Kobe Inc.

**THEPLAYERS’
TRIBUNE**

Consigliere

**DUGOUT
VENTURES**

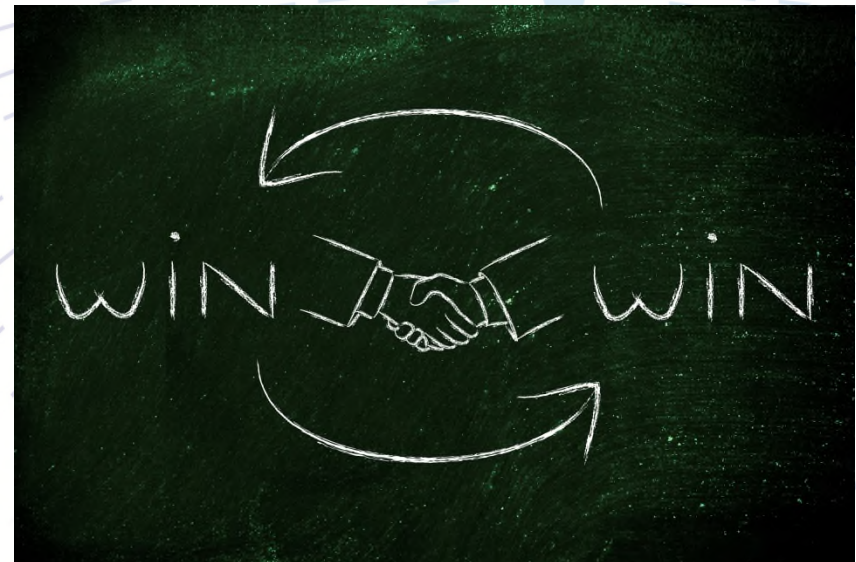
The Athlete as Media Mogul and (Digital) Media Outlet *(continued)*

- So Why Do Athletes Make Great Business Partners?
 - Commonality – companies and athletes have a lot in common: competitive, passion and a “never give up” attitude
 - Social media recognition – the power of social media branding and reach
 - Chad Ochocinco’s response when he wasn’t invited to the podium after the New England Patriots won the 2012 Super Bowl: “I’ve got three million fans on Twitter. That’s my podium.”



Athlete Equity-based Endorsement Deals and Related Exit Strategies

- Athlete as stakeholder – deals in which athletes have an equity stake in companies
- Creating alignment of interest to incentivize promotion and enhance collaboration
- Does the athlete “believe in” the product/service?
- Structuring athlete equity-based endorsements to benefit venture capital, private equity and startups

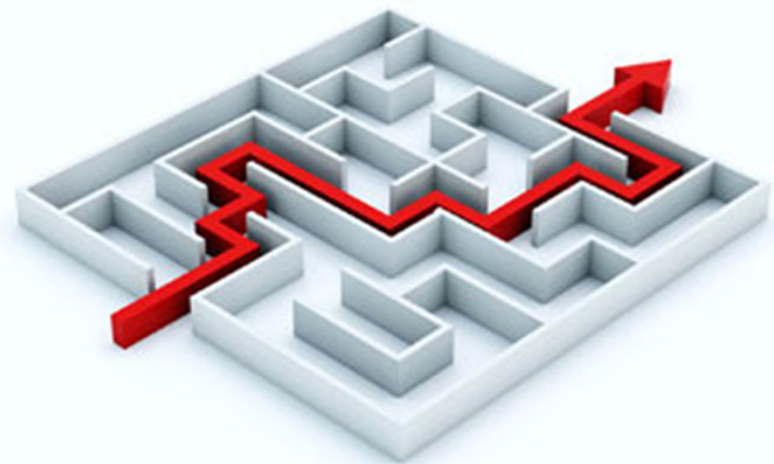


Athlete Equity-based Endorsement Deals and Related Exit Strategies *(continued)*

- Athletes provide several important benefits to advertising:
 - Using the athlete's platform to legitimize the brand
 - Brand name recognition - reassure consumers about true quality of the product; events that improve the endorser's reputation (notable achievement by an athlete) provide consumers with assurance about quality
 - Creating positive associations by transferring different qualities to the product like physical appeal or likeability helps the firm break through clutter in the marketplace and differentiate the brand from competitors'
 - Aiding the development of distinct brand personalities

Exit Strategies and Related Legal Issues

- Structuring and implementing appropriate exit strategies and termination rights if a party needs to exit upon the occurrence of certain events
- The importance of “thinking ahead” and pre-planning exist strategies and termination events
- Liquidity events – IPO, put/call rights, change of control etc.
- Understanding the deal structure, exit rights and the consequences of a termination event
- Buy-sell provisions and brand licensing
- Termination events may vary and often overlap



Exit Strategies and Related Legal Issues *(continued)*

- **Morals Clauses and Reverse Morals Clauses**
 - A morals clause allows a company (i.e., the advertiser in an endorsement agreement or an employer) to terminate, or otherwise take some corrective action against, an athlete who is tarnishing the company's reputation based on some "immoral" conduct
 - The importance of due diligence – before negotiating an endorsement agreement, advertiser must conduct due diligence on the athlete-endorser
 - Behavior triggering the morals clause – the kind of behavior that will trigger the morals clause in an endorsement agreement is a critical point in negotiations
 - A company paying for the endorsement services will want a broadly worded clause
 - An athlete will want a narrow morals clause; the more successful an athlete, the greater his or her bargaining power when negotiating a morals clause

Exit Strategies and Related Legal Issues *(continued)*

- Examples of morals clause language:
 - the Athlete dies, is incapacitated or the Athlete is **charged with** or convicted of any criminal conduct, or has committed or commits any act or becomes involved in any conduct that is **generally viewed by a majority of the public as highly offensive** and reprehensible from a legal or moral perspective, or that is **likely to adversely affect** Company or Company's image, brand, reputation, products or services. Company's decision on all matters arising under this paragraph shall be conclusive, and its rights under this paragraph shall be in addition to any other rights or remedies, which Company may have hereunder or at law or in equity or
 - at the election of the Company, immediately by delivering written notice thereof to the Athlete, in the event that: (i) the Athlete is **convicted by, or enters a plea of guilty or nolo contendere** in, a court of competent jurisdiction for any **felony**; or (ii) the Athlete makes **any statements in derogation of the Company** or any of its products or services and such statements are made in public or become a matter of public knowledge, as reasonably determined by the Company

Exit Strategies and Related Legal Issues *(continued)*

- Reverse morals clauses allow a player to terminate an endorsement agreement if the company engages in fraud or other criminal activities
- Example of reverse morals clause language:
 - In the event an officer of Company and/or a person authorized by Company to speak on Company's behalf commits any act that materially damages the commercial value of Athlete's name, or if Company takes or authorizes any legal action against Licensor or Athlete (other than legal action in connection with enforcement of this Agreement) or makes or authorizes any statements intended to be derogatory to Athlete or Licensor, and such action or statements are made known to the general public or become a matter of public knowledge during the Term.

Exit Strategies and Related Legal Issues *(continued)*

- Legal remedies for violation of a morals clause:
 - Breach of Contract (including cross-default provisions to other related/ancillary agreements, e.g. sponsorship/license agreement, services agreement, joint venture or shareholders agreement)
 - Bankruptcy
 - Death, disability/injury, retirement
 - Failure to comply with applicable laws, rules, regulations and policies, including league rules and regulations

Exit Strategies and Related Legal Issues *(continued)*

- Other termination events:
 - Breach of Contract (including cross-default provisions to other related/ancillary agreements, e.g. sponsorship/license agreement, services agreement, joint venture or shareholders agreement)
 - Bankruptcy
 - Death, disability/injury, retirement
 - Failure to comply with applicable laws, rules, regulations and policies, including league rules and regulations
 - Company, product or athlete becomes subject of an investigation (official v. unofficial) by a governmental, public health or regulatory body or administrative entity
 - Cessation of services or products
 - Failure to timely meet certain target dates, such as a product launch date
 - Failure to meet certain minimum thresholds, such as minimum royalties, annual sales or revenues etc.
 - Key man provisions/change of control
 - Deadlock events in scenarios where mutual approval is required, often seen in the corporate context where party has right to approve material actions/decisions
 - Repurchase rights – valuation; discounts and forfeiture

Other Legal Issues to Consider

- Risks unique to relevant industry
- Proper due diligence before closing a deal (e.g., litigation searches, background searches on prospective partners, investors, companies etc.)
- Playing “defense” – protecting the brand and evaluating intellectual property rights
- Compliance with league rules and regulations, and existing business deals
- Compliance with Federal Trade Commission (FTC) Endorsement Guidelines
- Compliance with advertising and promotion laws that apply to social media
- Monitoring the use of the brand/name and likeness through internal or third-party monitoring services
- Understanding the scope of exclusivity, authorized distribution channels and reservation of rights
- Insurance – what is and who is covered and by whom?

Pros and Cons of Athlete Endorsers

- Pros
 - Wealth building - athletes have short playing careers, and equity for endorsements can provide substantial income even after the athlete's playing days are over
 - Tax treatment - equity for endorsement taxed as capital gains; standard endorsement agreement taxed as income
 - Extreme payout - financial statements can provide predictive measures of whether the company is going in the right direction
 - Investment risk - equity for endorsement usually carries a low financial risk because the athlete is not investing money (just time)



Pros and Cons of Athlete Endorsers *(continued)*

- Cons
 - Payment - usually a hold period and just can't liquidate and receive immediate payment and many representatives are reluctant to recommend equity deals or investment opportunities that lack guaranteed revenue/return
 - Divorce - equity acquired during a marriage is subject to community property and equitable distribution laws
 - Company lockup - certain vesting schedules may apply with little means of terminating the relationship
 - Brand dilution - civil lawsuits or government action could make it difficult to disentangle from a brand



Legal Issues for Companies Working with Athletes

- Social Image - Does he/she have a positive or negative image in the public eye
- Brand recognition - Athletes can separate and distinguish certain brands they advertise; athlete's public image, including their character style, is always under media scrutiny
- Controversy - Controversial endorser images can alienate consumers; allegations of illicit, unethical, or unconventional behavior can hurt the image of the advertiser and product
- Guilty by association - Negative product image can cause consumers not only to form negative attitudes about the brand, but about the endorser as well, causing them not to want to be associated with or purchase that product affecting future sales of the product